

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 6th October, 1997.

CRIMINAL MISC. APPLICATION NO. 5526 of 1997

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

BHIKHABHAI UDESINH DARBAR : Applicant.

Versus

State of Gujarat. : Opponent.

Mr. V.D.PARGHI for Petitioner

Mr. D.N. Patel, APP for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of Order: 06/10/97

ORAL JUDGMENT

Rule. Mr. D.N. Patel, learned APP waives the service of Rule. At the request of both, the application is heard today.

2. The applicant prays for necessary modification in the order of bail granted by the learned Additional

Sessions Judge, Kheda at Nadiad in Criminal Misc. Application No. 625 of 1997.

3. It is not necessary to set out the details of the case, yet in short, the facts leading the applicant to file this application be delineated. On being arrested during the course of investigation after the FIR of the offences under Secs. 363 & 366 I.P. Code came to be filed before the police station at Petlad, the applicant filed Criminal Misc. Application No. 625 of 1997 before the Sessions Court, Kheda at Nadiad for bail. It was transferred to the court of the Additional Sessions Judge, Kheda at Nadiad for hearing and disposal in accordance with law. The learned Judge of that court hearing the parties allowed the application, and released the applicant on bail on his executing a personal bond of Rs. 5,000/- and also imposed certain conditions. Under one of the conditions the petitioner is directed to deposit non-refundable amount of Rs. 5,000/- in the Court of the Judicial Magistrate (F.C.) at Petlad. On the amount being deposited, the same is ordered to be paid to the victim Kokilaben. The applicant-accused could see that such condition imposed being opposed to law, was unjust & oppressive. He has therefore preferred the present application for deletion of that condition.

4. The applicant's learned advocate has contended that the learned Judge passed the order under mistaken assumption of power, or fancy for a particular ideology. Disembarrassment in this case is therefore absolutely necessary. The condition imposed being contrary to law is required to be deleted. On behalf of the State the learned APP agreeing with the applicant's learned advocate has submitted that the impugned condition being ill-based reflecting fallacious consideration is not tenable in law, and mistaken or sweetwilled conceptions are required to be disembroiled.

5. Whether the court while releasing the accused on bail can impose a condition directing the accused to deposit non-refundable amount in the court so as to straightway disburse the same thereafter to the victim, is the moot question raised in this application. No doubt the court having regards to the facts & circumstances of the case can impose necessary just & efficacious conditions assessing the situation, but the powers of the court are not unfettered. The accused cannot be subjected to any condition, or extravagant or irrelevant conditions the court at its fancy wants to impose. The conditions contemplated in Secs. 473(3), 438, 439 or 445, Cri.P.Code, 1973 whichever is applicable

to the case, or the conditions contemplated by other provisions of applicable special law governing the field alone can be imposed. The conditions must therefore have a reference to those necessary in the interest of justice, or securing accused's presence at the trial, and his receiving judicial verdict, or preventing him from fleeing or watching & checking his activities injurious the interest of prosecution, or the requirements of an uninterrupted investigation, or inhibitting the accused from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before police & court or restricting accused's movements in a particular area or locality, or maintenance of law & order, or larger interest, or accused's safety or safety of others, or prevention of recurrence of any crime or of incident a subject matter of investigation and the like. To subject the accused to any other conditions beyond the jurisdiction or power or freakish condition will be repugnant to law. The court must therefore be extremely chary and should not transgress its jurisdiction or power and pass the order contrary to law; or the order causing injury to accused, or any party, or operating as an engine of oppression. Further the conditions imposed must not be harsh, onerous or excessive so as to frustrate the very object of bail, or indirectly deny the bail, or protection of law. In other words, every Judge has to observe self restraint and pass the order strictly remaining within the four corners of law. He cannot be overzealous. However laudable ideology or philosophy he may have inculcated and fostered; and cultivated a craze or fancy for the same, he cannot give vent to his ideology or philosophy in the order he is passing if the same is not in consonance with law or powers he is having in law. If the ideology or philosophy or one's own views having no place in law, but being obsessed with the same if it is made the base of the order, it would tantamount to tainting the order with extraneous consideration transgressing one's own limits or powers, and that would make the order a freak, or make the order penal, unjust, unfair, arbitrary or capricious & illegal causing injury & injustice to the accused being negation to his rights & liberty.

6. I cannot subscribe to the impugned condition incorporated in the order granting bail, as the same is in reference to neither of the above stated categories of the conditions falling within the ambits of Sec. 473(3), Cri.P. Code, 1973 the cynosure. By such condition, the bail is rendered nugatory and indirectly denied. Further the condition is of a penal in nature. The penalty is imposed when charge is proved and not prior to it. The

lower court has without trial assumed the accused guilty and inflicted penalty as if he was (may be keeping in mind Sec. 357 Cri.P. Code) passing the final order of sentence, which is not permissible in law. Oblivious of the bounds of law, it seems becoming overzealous and obsessed with particular ideology or philosophy he may have inculcated, the learned Judge transgressing his jurisdiction passed the impulsive order capriciously which is certainly contrary to law, so far as it relates to impugned condition. Consequently, the freakish condition incorporated in the order operating as an engine of oppression is required to be deleted.

7. For the aforesaid reasons, the application is allowed and impugned condition directing the applicant-accused to deposit non-refundable amount of Rs.5,000/- in Court and then to disburse the same to Kokilaben, the victim, is hereby deleted & quashed. Rest of the bail order is maintained. Rule accordingly made absolute.

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